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Preparatory Commission for the International Criminal Court

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Preparatory Commission for the International Criminal Court
Working Group on Financial Regulations and Rules
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Report of the Working Group on Financial Regulations and Rules

Draft financial regulations

The Assembly of States Parties,

Noting that the Rome Statute of the International Criminal Court, article 113, provides that, except as otherwise specifically provided, all financial matters related to the Court and the meetings of the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be governed by the Rome Statute and the Financial Regulations and Rules adopted by the Assembly of States Parties,

Adopts the following Financial Regulations[1] for the International Criminal Court.

Regulation 1
Applicability

1.1 These Regulations shall govern the financial administration of the International Criminal Court.

1.2 For the purposes of these Regulations:

(a) "Assembly of States Parties" means the Assembly of States Parties to the Rome Statute of the International Criminal Court, adopted at Rome on 17 July 1998;

(b) "Committee on Budget and Finance" means the Committee established as such by the Assembly of States Parties;

(c) "Court" means the International Criminal Court;

(d) "Presidency" means the Presidency of the International Criminal Court;

[1] The financial rules of the Court will be adopted at a later stage.

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(e) "Registrar" means the Registrar of the International Criminal Court;

(f) "Rome Statute" means the Rome Statute of the International Criminal Court, adopted at Rome on 17 July 1998.

1.3 The Assembly of States Parties shall establish detailed financial rules and procedures in order to ensure effective financial administration and the exercise of economy.

1.4 These regulations shall be implemented in a manner consistent with the responsibilities of the Prosecutor and of the Registrar as set out in articles 42, paragraph 2, and 43, paragraph 1, of the Rome Statute. The Prosecutor and the Registrar shall cooperate, taking into account the independent exercise by the Prosecutor of his or her functions under the Statute.

Regulation 2
The financial period

2.1 The financial period shall consist initially of one calendar year unless otherwise decided by the Assembly of States Parties for the first-year budget of the Court. The Assembly of States Parties shall keep under review the financial period.

Regulation 3
Programme budget

3.1 The proposed programme budget for each financial period shall be prepared by the Registrar in consultation with the other organs of the Court referred to in article 34, subparagraphs (a) and (c), of the Rome Statute. The proposed programme budget shall be divided into parts, sections and, as appropriate, programme support, in accordance with the relevant articles of the Statute. The proposed programme budget shall include funding for the expenses of the Assembly of States Parties, including its Bureau and subsidiary bodies.

3.2 The proposed programme budget shall cover income and expenditures for the financial period to which they relate and shall be presented in the currency of the statutory headquarters of the Court.

3.3 The budget narrative shall set out wherever possible concrete objectives, expected results and key performance indicators for the financial period. It shall be accompanied by such information, annexes and explanatory statements as may be requested by or on behalf of the Assembly of States Parties, including a statement on the main changes in comparison with the budget of the previous financial period and such further annexes or statements as the Registrar may deem necessary and useful. The Registrar shall monitor achievement of objectives and service delivery during the financial period and report in the context of the next proposed budget on actual performance attained.

3.4 The Registrar shall submit the proposed programme budget for the following financial period to the Committee on Budget and Finance at least 45 days prior to the meeting at which the Committee shall consider the proposed programme budget. At the same time, the Registrar shall also submit the proposed programme budget to the States Parties.

3.5 The Committee on Budget and Finance shall consider the proposed programme budget and shall submit its comments and recommendations to the Assembly of States Parties. The Assembly shall consider the proposed programme budget and take a decision on it.

3.6 Supplementary budget proposals may be submitted by the Registrar with respect to the current financial period if circumstances unforeseen at the time of adopting the budget make it necessary. In this case, the supplementary budget proposal shall be in a form consistent with the approved budget. The provisions of these Regulations shall be applicable to the proposed supplementary budget. Decisions of the Assembly of States Parties on the supplementary budget proposed by the Registrar shall be based on the recommendations of the Committee on Budget and Finance.

3.7 The Registrar may enter into commitments for future financial periods, provided that such commitments are for activities which have been approved by the Assembly of States Parties and are expected to occur or continue beyond the end of the current financial period.

Regulation 4
Appropriations

4.1 The appropriations adopted by the Assembly of States Parties shall constitute an authorization for the Registrar to incur obligations and make payments for the purposes of which the appropriations were adopted and up to the amounts adopted.

4.2 There shall be adopted an appropriation line, divided into two or more instalments, in each proposed programme budget to cover expenditures if they:

(a) Result from activities of the Court required by the Rome Statute or the Rules of Procedure and Evidence;

(b) Were unforeseeable at the time of adoption of the proposed programme budget;

(c) Cannot be met by transfers between appropriation sections in accordance with regulation 4.8; and

(d) Are of such an urgent nature that the Assembly of States Parties cannot be convened to approve the appropriations in accordance with regulation 3.6.

The appropriation line shall be funded in accordance with regulation 5.3.

4.3 The appropriation line adopted by the Assembly of States Parties in accordance with regulation 4.2 shall constitute an authorization for the Registrar, at his or her own decision or at the request of the Prosecutor or of the Presidency, as the case may be, with the prior concurrence of the Committee on Budget and

Finance, to incur obligations and make payments for the purposes for which the appropriation line was adopted and up to the amount provided in the first instalment of the appropriation line. The Registrar may incur obligations and make payments up to the amount provided in each instalment of the appropriation line only after all the previous instalments have been obligated or disbursed. The Registrar shall report to the Committee on Budget and Finance any payment effected or obligation incurred under regulation 4.2.

4.4 Appropriations shall be available for obligation during the financial period to which they relate.

4.5 Appropriations shall remain available for twelve months following the end of the financial period to which they relate to the extent that they are required to liquidate any outstanding legal obligations of the financial period. The balance of the appropriations remaining unobligated at the close of the financial period, after deducting therefrom any contributions from States Parties relating to that financial year which remain unpaid, shall form part of any cash surplus of the budget and shall be treated in accordance with regulation 4.7.

4.6 At the end of the twelve-month period provided in regulation 4.5 the then remaining unspent balance of appropriations retained after deducting therefrom any contributions from States Parties relating to the financial period of the appropriations which remain unpaid shall be treated as a cash surplus as in regulation 4.5. Any obligations remaining a valid claim at that time shall be charged against current appropriations.

The provisional cash surplus for the financial period shall be determined by establishing the balance between credits (assessed contributions actually received for the financial period and miscellaneous income received during the financial period) and charges (all disbursements against the appropriations for that financial period and provisions for unliquidated obligations for that financial period).

The cash surplus for the financial period shall be determined by crediting to the provisional cash surplus any arrears of prior periods' assessed contributions from States Parties received during this period and any savings from the provisions made for unliquidated obligations as mentioned above. Any remaining outstanding obligations shall be re-obligated against the appropriations of the current financial period.

4.7 Any cash surplus in the budget at the close of any financial period shall be apportioned among States Parties in proportion to the scale of assessments applicable to the financial period to which the surplus relates. As of 1 January following the year in which the audit of the accounts of the financial period is completed, the amount so apportioned to a State Party shall be surrendered to such State Party if its contribution for that financial period has been paid in full and shall be applied to liquidate, in whole or in part, first, any advance due to the Working Capital Fund; secondly, any arrears of assessed contributions; and thirdly, assessed contributions for the calendar year following the year in which the audit is completed.

While any cash surplus in the budget shall be apportioned among all States Parties, the amount so apportioned shall be surrendered only to those States Parties which have paid in full their contributions for that financial period. Amounts apportioned but not surrendered shall be retained by the Registrar until such time as the contribution for the relevant financial period is paid in full, at which time they shall be applied as set forth above.

4.8 No transfer between appropriation sections may be made without authorization by the Assembly of States Parties, unless such a transfer is made necessary by exceptional circumstances, and is in accordance with criteria to be agreed upon by the Assembly of States Parties.

4.9 The officials heading the organs referred to in article 34, subparagraphs (c) and (d), of the Rome Statute shall be accountable to the Assembly of States Parties for the proper management and administration of the financial resources for which they are responsible, as set out in articles 42, paragraph 2, and 43, paragraph 1, of the Rome Statute. They shall prudently manage the appropriations so as to ensure that expenditures can be met from funds available, keeping in view the actual contributions received and the availability of cash balances.

Regulation 5
Provision of funds

5.1 The funds of the Court shall include:

(a) Assessed contributions made by States Parties in accordance with article 115, subparagraph (a), of the Rome Statute;

(b) Funds provided by the United Nations in accordance with article 115, subparagraph (b), of the Rome Statute;

(c) Voluntary contributions by Governments, international organizations, individuals, corporations and other entities, in accordance with article 116 of the Rome Statute;

(d) Such other funds to which the Court may become entitled or may receive.

5.2 The appropriations, subject to the adjustments effected in accordance with the provisions of regulation 5.4, shall be financed by contributions from States Parties in accordance with an agreed scale of assessment, as provided for in article 117 of the Rome Statute. This scale shall be based on the scale adopted by the United Nations for its regular budget, and adjusted in accordance with the principles on which that scale is based, in order to take into account the differences in membership between the United Nations and the Court. The scale shall be adopted by the Assembly of the States Parties. Pending the receipt of such contributions, the appropriations may be financed from the Working Capital Fund.

5.3 The appropriations provided for in regulation 4.2 shall be financed from the assessed contributions from States Parties in accordance with regulation 5.2 up to a limit to be decided upon by the Assembly of States Parties in each budget resolution. Pending the receipt of such contributions, the appropriations may be financed from the Working Capital Fund.

5.4 The contributions of States Parties shall be assessed for a financial period on the basis of the appropriations approved by the Assembly of States Parties for that financial period. Adjustments to the assessments of States Parties shall be made in respect of:

(a) Any balance of the appropriations surrendered under regulation 4.7;

(b) Contributions resulting from the assessment of new States Parties under the provisions of regulation 5.10;

(c) Miscellaneous income.

5.5 After the Assembly of States Parties has reviewed and adopted the budget and determined the amount of the Working Capital Fund, the Registrar shall:

(a) Transmit the relevant documents to the States Parties;

(b) Inform the States Parties of their commitments in respect of annual assessed contributions and advances to the Working Capital Fund;

(c) Request them to remit their contributions and advances.

5.6 Assessed contributions and advances shall be considered as due and payable in full within thirty days of the receipt of the communication of the Registrar referred to in regulation 5.5 or as of the first day of the calendar year to which they relate, whichever is the later. As of 1 January of the following calendar year, the unpaid balance of such contributions and advances shall be considered to be one year in arrears.

5.7 Contributions and advances to the Working Capital Fund shall be assessed and paid in the currency of the statutory headquarters of the Court. The contributions and advances to the Working Capital Fund may also be paid in any other currency that is freely convertible into the currency of the statutory headquarters of the Court. Any currency exchange cost will be borne by the State Party which decided to pay in a currency other than the currency of the statutory headquarters of the Court.

5.8 Payments made by a State Party shall be credited first to the Working Capital Fund and then to the contributions due, in the order in which the State Party was assessed.

5.9 The Registrar shall submit to each meeting of the Assembly of States Parties a report on the collection of contributions and advances to the Working Capital Fund.

5.10 New States Parties shall be required to make contributions for the year in which they become States Parties and to provide their proportion of the total advances to the Working Capital Fund at rates to be determined by the Assembly of States Parties.

Regulation 6
Funds

6.1 There shall be established a General Fund for the purpose of accounting for the expenditures of the Court. The contributions referred to in regulation 5.1 by States Parties and miscellaneous income and any advances made from the

Working Capital Fund to finance expenditures shall be credited to the General Fund.

6.2 There shall be established a Working Capital Fund to ensure capital for the Court to meet short-term liquidity problems pending receipt of assessed contributions. The amount shall be determined from time to time by the Assembly of States Parties. The Working Capital Fund shall be constituted by advances from States Parties. Advances shall be made in accordance with the agreed scale of assessment pursuant to regulation 5.2. Advances shall be carried to the credit of States Parties which have made such advances.

6.3 Advances made from the Working Capital Fund to finance budgetary appropriations shall be reimbursed to the Fund as soon as and to the extent that income is available for that purpose.

6.4 Income derived from investments of the Working Capital Fund shall be credited to miscellaneous income.

6.5 Trust funds and special accounts funded wholly by voluntary contributions may be established and closed by the Registrar and shall be reported to the Presidency and, through the Committee on Budget and Finance, to the Assembly of States Parties.

Reserve accounts and special accounts funded wholly or in part by assessed contributions may be established by the Assembly of States Parties.

The purposes and limits of each trust fund, reserve and special account shall be clearly defined by the appropriate authority. Unless otherwise decided by the Assembly of States Parties, such funds and accounts shall be administered in accordance with these Regulations.

Regulation 7
Other income

7.1 All other income except:

(a) Assessed contributions made by States Parties to the budget;

(b) Funds provided by the United Nations in accordance with article 115, subparagraph (b), of the Rome Statute;

(c) Voluntary contributions in accordance with article 116 of the Rome Statute and regulation 7.3 made by States Parties, other States, international organizations, individuals, corporations and other entities;

(d) Direct refunds of expenditures made during the financial period;

shall be classed as miscellaneous income, for credit to the General Fund.

7.2 Voluntary contributions, gifts and donations, whether or not in cash, may only be accepted by the Registrar, provided that they are consistent with the nature and functions of the Court and the criteria to be adopted by the Assembly of States Parties on the subject, in accordance with article 116 of the Rome Statute. Acceptance of contributions which directly or indirectly involve additional financial liability for the Court shall require the prior consent of the Assembly of States Parties.

7.3 Voluntary contributions accepted for purposes specified by the donors shall be treated as trust funds or special accounts.

7.4 Voluntary contributions in respect of which no purpose is specified shall be treated as miscellaneous income and reported as "gifts" in the accounts of the financial period.

Regulation 8
Custody of funds

8.1 The Registrar shall designate the bank or banks in which the funds of the Court shall be kept.

Regulation 9
Investment of funds

9.1 The Registrar may make short-term investments of moneys not needed for immediate requirements and shall periodically inform the Presidency and, through the Committee on Budget and Finance, the Assembly of States Parties of such investments.

9.2 Income derived from investments shall be credited to miscellaneous income or as provided in the rules relating to each trust fund or special account.

Regulation 10
Internal control

10.1 The Registrar shall:

(a) Cause all payments to be made on the basis of supporting vouchers and other documents which ensure that the services or goods have been received and that payments have not previously been made;

(b) Designate the officers who may receive moneys, incur obligations and make payments on behalf of the Court;

(c) Maintain an internal financial control which shall provide for effective current examination and/or review of financial transactions in order to ensure:

(i) The regularity of the receipt, custody and disposal of all funds and other financial resources of the Court;

(ii) The conformity of obligations and expenditures with the appropriations or other financial provisions voted by the Assembly of States Parties, or with the purposes and rules relating to trust funds and special accounts;

(iii) The economic use of the resources of the Court.

10.2 Obligations for the current financial period or commitments for current and future financial periods shall be incurred only after allotments or other appropriate authorizations have been made in writing under the authority of the Registrar.

10.3 The Registrar may make such ex gratia payments as he or she deems to be necessary in the interest of the Court, provided that the statement of such payments shall be submitted to the Assembly of States Parties with the accounts.

10.4 The Registrar may, after full investigation, authorize the writing-off of losses of cash, stores and other assets, provided that a statement of all such amounts written off shall be submitted to the Auditor with the accounts and reported to the Assembly of States Parties.

10.5 Substantial purchases of equipment, supplies and other requirements as specified in the Financial Rules shall be by tender. Such tenders shall be invited by advertisement, except where the Registrar, with the approval of the Presidency, and in accordance with the Financial Rules, deems that, in the interests of the Court, a departure from the rule is desirable.

Regulation 11
The accounts

11.1 The Registrar shall submit to the Auditor accounts for the financial period not later than 31 March following the end of such period. In addition, the Registrar shall maintain, for management purposes, such accounting records as are necessary. The accounts for the financial period shall show:

(a) The income and expenditures of all funds;

(b) The status of appropriations, including:

(i) The original budget appropriations;

(ii) The appropriations as modified by any transfers;

(iii) Credits, if any, other than the appropriations adopted by the Assembly of States Parties;

(iv) The amounts charged against those appropriations and/or other credits;

(c) The assets and liabilities of the Court.

The Registrar shall also give such other information as may be appropriate to indicate the current financial position of the Court.

11.2 The accounts of the Court shall be presented in the currency of the statutory headquarters of the Court. Accounting records may, however, be kept in such other currency as the Registrar may deem necessary.

11.3 Appropriate separate accounts shall be maintained for all trust funds and special accounts.

Regulation 12
Audit

12.1 The Assembly of States Parties shall appoint an Auditor, which may be an internationally recognized firm of auditors or an Auditor General or an official of a State Party with an equivalent title. The Auditor shall be appointed for a period of four years and its appointment may be renewed.

12.2 The audit shall be conducted in conformity with generally accepted common auditing standards, subject to any special directions of the Assembly of States Parties and in accordance with the additional terms of reference set out in the annex to these Regulations.

12.3 The Auditor may make observations with respect to the efficiency of the financial procedures, the accounting system, the internal financial controls and, in general, the administration and management of the Court.

12.4 The Auditor shall be completely independent and solely responsible for the conduct of the audit.

12.5 The Assembly of States Parties may request the Auditor to perform certain specific examinations and issue separate reports on the results.

12.6 The Registrar shall provide the Auditor with the facilities required in the performance of the audit.

12.7 The Auditor shall issue a report on the audit of the financial statements and relevant schedules relating to the accounts for the financial period, which shall include such information as the Auditor deems necessary with regard to matters referred to in regulation 12.3 and in the additional terms of reference as set out in the annex to these Regulations.

12.8 The Registrar, in consultation with the other organs of the Court referred to in article 34, subparagraphs (a) and (c), of the Rome Statute, shall examine the audit reports, including reports referred to in regulation 12.5, and shall forward the financial statements and the audit report to the Committee on Budget and Finance, with such comments on the audit report as they deem appropriate.

12.9 The Committee on Budget and Finance shall examine the financial statements and audit reports, including reports referred to in regulation 12.5 and the comments of the Registrar and other organs of the Court referred to in article 34, subparagraphs (a) and (c), of the Rome Statute, and shall forward them to the Assembly of States Parties, with such comments as it deems appropriate, for consideration and approval.

Regulation 13
General provisions

13.1 These Regulations shall become effective on a date to be decided upon by the Assembly of States Parties and shall apply to the initial financial period agreed to by the Assembly of States Parties and to subsequent financial periods as provided for in regulation 2.1.

13.2 These Regulations may be amended by the Assembly of States Parties.

Annex to the Financial Regulations

Additional terms of reference governing the audit of the International Criminal Court

1. The Auditor shall perform such audit of the accounts of the Court, including all trust funds and special accounts, as it deems necessary in order to satisfy itself:

(a) That the financial statements are in accord with the books and records of the Court;

(b) That the financial transactions reflected in the statements have been in accordance with the financial rules and regulations, the budgetary provisions and other applicable directives;

(c) That the securities and moneys on deposit and on hand have been verified by certificates received direct from the Court's depositaries or by actual count;

(d) That the internal controls, including internal oversight, are adequate in the light of the extent of reliance placed thereupon.

2. The Auditor shall be the sole judge as to the acceptance in whole or in part of certifications and representations by the Registrar and may proceed to such detailed examination and verification as it chooses of all financial records, including those relating to supplies and equipment.

3. The Auditor and its staff shall have free access at all convenient times to all books, records and other documentation which are, in the opinion of the Auditor, necessary for the performance of the audit. Information which is classified as privileged and which the Registrar (or a designated senior official) agrees is required by the Auditor for the purposes of the audit and information classified as confidential shall be made available on application. The Auditor and its staff shall respect the privileged and confidential nature of any information so classified which has been made available and shall not make use of it except in direct connection with the performance of the audit. The Auditor may draw the attention of the Court and the Assembly of States Parties to any denial of information classified as privileged which, in its opinion, was required for the purpose of the audit.

4. The Auditor shall have no power to disallow items in the accounts but shall draw the attention of the Registrar, for appropriate action, to any transaction for which it entertains doubt as to legality or propriety. Audit objections, to these or any other transactions, arising during the examination of the accounts shall be communicated immediately to the Registrar.

5. The Auditor (or such of its officers as it may designate) shall express and sign an opinion on the financial statements which shall read as follows:

> "We have examined the following appended financial statements, numbered ... to ..., properly identified, and relevant schedules of the International Criminal Court for the financial period ended 31 December ... Our examination included a general review of the accounting procedures and such tests of the accounting records and other supporting evidence as we considered necessary in the circumstances."

The opinion shall also state, as appropriate, whether:

(a) The financial statements present fairly the financial position as at the end of the period and the results of their operations for the period then ended;

(b) The financial statements were prepared in accordance with the stated accounting principles;

(c) The accounting principles were applied on a basis consistent with that of the preceding financial report;

(d) Transactions were in accordance with the Financial Regulations and legislative authority.

6. The report of the Auditor on the financial operations of the Court for the financial period shall be submitted to the Assembly of States Parties in accordance with regulations 12.8 and 12.9. It shall indicate:

(a) The type and scope of the Auditor's examination;

(b) Matters affecting the completeness and accuracy of the accounts, including, where appropriate:

(i) Information necessary to the correct interpretation of the accounts;

(ii) Any amounts which ought to have been received but which have not been brought to account;

(iii) Any amounts for which a legal or contingent obligation exists and which have not been recorded or reflected in the financial statements;

(iv) Expenditures not properly substantiated;

(v) Whether proper books of accounts have been kept — where in the presentation of statements there are deviations of a material nature from the generally accepted accounting principles applied on a consistent basis, these should be disclosed;

(c) Other matters which the Auditor considers should be brought to the notice of the Assembly of States Parties, such as:

(i) Cases of fraud or presumptive fraud;

(ii) Wasteful or improper expenditure of the Court's money or other assets, notwithstanding that the accounting for the transaction may be correct;

(iii) Expenditure likely to commit the Court to further outlay on a large scale;

(iv) Any defect in the general system or detailed regulations governing the control of receipts and disbursements or of supplies and equipment;

(v) Expenditure not in accordance with the intention of the Assembly of States Parties after making allowance for duly authorized transfers within the budget;

(vi) Expenditure in excess of appropriations as amended by duly authorized transfers within the budget;

(vii) Expenditure not in conformity with the authority which governs it;

(d) The accuracy or otherwise of the supplies and equipment records as determined by stock-taking and examination of the records;

(e) If appropriate, transactions accounted for in a previous period concerning which further information has been obtained or transactions in a later period concerning which it seems desirable that the Assembly of States Parties should have early knowledge.

7. The Auditor may make such observations with respect to its findings resulting from the audit and such comments on the Registrar's financial report as it deems appropriate to the Assembly of States Parties, the Prosecutor or the Registrar.

8. Whenever the scope of audit of the Auditor is restricted, or whenever it is unable to obtain sufficient evidence, it shall refer to the matter in its opinion and report, making clear in the report the reasons for its comments and the effect on the financial position and the financial transactions as recorded.

9. In no case shall the Auditor include criticism in its report without first affording the Registrar an adequate opportunity of explanation on the matter under observation.

10. The Auditor shall not be required to mention any matter referred to in the foregoing that, in its opinion, is insignificant in all respects.